MOTION FILED
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PETITION FOR CERTIORARI
TO THE

Supreme Court of the United States

OCTOBER TERM, 1977

No. 77-1625

IMAGE CARRIER CORPORATION,
Appellants,

v.

ABRAHAM D. BEAME, *et al.*,
Appellees.

ON APPEAL FROM THE UNITED STATES
COURT OF APPEALS FROM THE SECOND CIRCUIT

MOTION FOR LEAVE TO FILE BRIEF AMICUS CURIAE, AND BRIEF AMICUS CURIAE ON BEHALF OF THE ASSOCIATED BUILDERS AND CONTRACTORS, INC., URGING GRANT OF CERTIORARI

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15 May 1978

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MOTION

Pursuant to Rule 42 of the Rules of this Court, the Associated Builders and Contractors, Inc., hereby moves for leave to file the annexed brief amicus curiae, urging that a writ of certiorari be granted to review the decision of the Second Circuit Court of Appeals.

INTEREST OF THE ASSOCIATED BUILDERS AND CONTRACTORS, INC.

On December 30, 1977, the U. S. Court of Appeals for the Second Circuit reversed the U. S. District Court decision in this case. The decision dealt with the New York Executive Order of 1934 which confines bids for City printing contracts to union printers only. We urge that the Order denies nonunion printers their rights as guaranteed by the equal protection clause of the 14th Amendment to the United States Constitution and that the decision of the U. S. District Court should be upheld.

The Associated Builders and Contractors, Inc., the moving party herein, is a national trade association of 12,000 companies which believe in the "merit shop" principle under which bidders for construction are able and dedicated to practice free and open competition in the American marketplace. However, the AFL-CIO Building Trades and some independent unions do not advocate or practice such market freedom because they do not want union members working alongside nonunion workers. Hence, among other means, they utilize and protect market restraints, as involved in this case, to keep their members and others who may hire them, from free and open competition. Among these restrictive measures is the Municipal decree herein, where the effect of the Executive Order inhibits and prevents open bidding and free competition.

However, the ultimate decision in this case is not only vital to nonunion printing companies and their employees, but to all private sector employers and their employees, including our members. It involves whether we all shall participate in free and open competition not only in New York City but in any American marketplace.

We are enthusiastic that the appellants seek to seriously and skillfully defend their interests. Nonetheless, the Associated Builders and Contractors, Inc., aims by its filing to underscore that this case is not only of relevance to a narrow printing industry interest, but has wide-ranging implication and application.

These same issues involve federal questions and have special and important bearing on all American free enterprise; therefore, the Court will be applying sound judicial discretion in granting a writ of certiorari and reviewing these vital questions involved. We elaborate on these matters herein.

Respectfully submitted,

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TABLE OF CITATIONS

JUDICIAL CITATIONS:

Shultis v. McDougal 32 S.Ct. 704,
225 U.S. 561 (1912)

Feibelman v. Packard, 3 Sup. Ct. 289,
109 U. S. 421 (1883)

United Gas Pipeline Co. v. Ideal Cement Co.,
82 S. Ct. 676, 369 U.S. 134 (1962)

Foster Fountain Packing Co. v. Haydel,
228 U. S. 1 (1928)

Leisy v. Harden, 135 U.S. 100 (1890)

Dandridge v. Williams, 397 U.S. 471 (1970)

NEW YORK STATE STATUTES CITED:

General Statutes of New York, Municipal
Law, Section 103

MUNICIPAL EXECUTIVE ORDERS CITED:

New York City Executive Order of
April 12, 1934

FEDERAL LABOR LAW CITED:

Section 7 of the National
Labor Relations Act

FEDERAL STATUTES CITED:

28 U.S.C.A. 1254(2)

U.S. CONSTITUTION CITED:

Section 1 of the 14th Amendment to
the United States Constitution

BEFORE THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1977

No.

IMAGE CARRIER CORPORATION,

Appellants,

v.

ABRAHAM D. BEAME, *et al.*,

Appellees.

ON APPEAL FROM THE
SECOND CIRCUIT COURT OF APPEALS

BRIEF AMICUS CURIAE ON BEHALF OF THE ASSOCIATED BUILDERS AND CONTRACTORS, INC. URGING GRANT OF A WRIT OF CERTIORARI

The Associated Builders and Contractors, Inc., files this brief amicus curiae in support of appellants, Image Carrier Corporation, urging this Court to grant certiorari to review the decision of the U. S. Second Circuit Court of Appeals.

INTEREST OF THE ASSOCIATED BUILDERS AND CONTRACTORS, INC.

The interest of the Associated Builders and Contractors, Inc., in participating as amicus curiae in this case is set forth above.

ARGUMENT

This case involves a matter arising under the United States Constitution respecting the constitutional repugnancy and effect of a municipal executive order; Shultis v. McDougal, 32 S.Ct. 704, 706; 225 U.S. 561, 569. (See also 28 U.S.C.A. 1254(2); United Gas Pipeline Company v. Ideal Cement Co., 1962, 82 S.Ct. 676, 369 U.S. 134.) By grant of writ and review, the Court will apply constitutional law to effect a remedy. Feibelman v. Packard, 1883, 3 Sup. Ct. 289, 109 U.S. 421, 27 L.Ed. 984.

The grant to Congress in the commerce clause of the Constitution was unaccompanied by an explicit limitation on the powers of the States or their municipalities over commercial matters. However, the U. S. Supreme Court has held that the clause impliedly denies the right of States (or their subclassifications) authority to impose unreasonable and unrational burdens on interstate commerce. This is especially the case where the subject matter on which they intend their laws to operate is national in character and requires uniformity of regulation. Leisy v. Harden, 135 U.S. 100, 119-20 (1890).

"Interstate commerce" includes all the "component parts" and "essential elements of commercial intercourse among the States." Foster Fountain Packing Company v. Haydel, 278 U.S. 1, 10 (1928).

The New York City ordinance deprives the right of all citizens as beneficiaries of the degree of care required of Trustees (councilmen) of the City acting as fiduciaries for the City's responsibility. Public bidding laws are to ensure that contracts are awarded to the lowest responsible bidder. (General New York Municipal Law; Section 103, NY State (1953).) These regulations, as any others, are to benefit the public, not any of the bidders.

The ordinance should not be used to promote the interests of any labor organization in coercing printing shops, or anyone, including bidders who might cause infringement under Section 7 of the National Labor Relations Act, to unionize workers in order to qualify for city contracts.

The appellees' restrictive "bid union only" policy is not reasonable or proximately related to the "special" job which must be performed.

When local economic regulations are challenged as violating the equal participation clause of the United States Constitution, the Court will inquire into the particular executive order determinations and discriminations, to see if the challenge is rationally related to the legitimate State or municipal concerned. Dandridge v. Williams, 397 U.S. 471 (1970). We point out that the record herein would hardly justify a municipal concern and interest in forcing workers to belong to any union (see Section 7 of the National Labor Relations Act); to compel contractors to pay higher wages

than free and competitive bidding would cause; or that the ordinance directly relates in proximate cause to performance of high quality work. Therefore, it is not rational.

The U.S. District Court heard the evidence. Its decision should be affirmed and the U. S. Circuit Court of Appeals decision which reversed their decision should be reversed.

A writ of certiorari should be granted.